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CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE, a non-profit  
corporation,

Plaintiff,

vs.

MENDOCINO FOREST PRODUCTS  
COMPANY, LLC,

Defendant.

Case No. 3:17-cv-01223-VC

**[PROPOSED] CONSENT AGREEMENT**  
**(Federal Water Pollution Control Act,**  
**33 U.S.C. §§ 1251 to 1388)**

**WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter "CSPA")  
is a non-profit public benefit corporation dedicated to the preservation, protection, and defense  
of the environment, wildlife, and natural resources of California's waters;

**WHEREAS**, Defendant Mendocino Forest Products Company, LLC (hereinafter  
"MFP" or "Defendant") owns and/or operates an approximately 176-acre facility at 850  
Kunzler Ranch Road, in Ukiah, California where Defendant conducts various sawmill and  
planing mill activities including log storage and handling, milling of lumber, lumber planing,  
fenceline operations, wood surface protection, lumber drying, lumber storage and shipping,

1 maintenance of the manufacturing and rolling stock equipment and systems, and wood treating  
2 (collectively, the "Facility");

3 **WHEREAS**, CSPA and Defendant collectively shall be referred to as the "Parties;"

4 **WHEREAS**, the Facility collects and discharges storm water from the Facility into  
5 storm water conveyances which discharge to the Russian River and Hensley Creek (maps of  
6 the Facility are attached hereto as **Exhibit A** and incorporated herein by reference)<sup>1</sup>;

7 **WHEREAS**, storm water discharges associated with industrial activity are regulated  
8 pursuant to the National Pollutant Discharge Elimination System ("NPDES"), General Permit  
9 No. CAS000001, State Water Resources Control Board ("State Board") Water Quality Order  
10 No. 14-57-DWQ, issued pursuant to Section 402(p) of the Clean Water Act ("Act"), 33 U.S.C.  
11 §1342(p), (hereinafter "Revised General Permit"<sup>2</sup>) and, prior to July 1, 2015, were regulated  
12 by Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order 92-12-DWQ  
13 and 97-03-DWQ;

14 **WHEREAS**, on or about January 4, 2017, Plaintiff provided notice of Defendant's  
15 violations of the Act ("Clean Water Act Notice Letter"), and of its intention to file suit against  
16 Defendant to the Administrator of the United States Environmental Protection Agency  
17 ("EPA"); the Administrator of EPA Region IX; the U.S. Attorney General; the Executive  
18 Director of the State Board; the Executive Officer of the Regional Water Quality Control  
19 Board, North Coast Region ("Regional Board"); and to Defendant, as required by the Act, 33  
20 U.S.C. § 1365(b)(1)(A) (a true and correct copy of CSPA's Clean Water Act Notice Letter is  
21 \_\_\_\_\_  
22

23 <sup>1</sup> Exhibit A consists of two maps. The first is entitled "2017 Facility Map" and reflects Facility  
24 conditions as the Parties intend them to be as of December 1, 2017; the second is entitled "2018  
25 Facility Map" and reflects Facility conditions as the Parties intend them to be as of October 1, 2018.

26 <sup>2</sup> National Pollution Discharge Elimination System (NPDES) General Permit for Storm Water  
Discharges Associated with Industrial Activities; Order NPDES No. CAS000001 (April 1, 2014),  
State Water Resources Control Board Water Quality Order 2014-0057-DWQ.

1 attached hereto as **Exhibit B** and incorporated herein by reference);

2 **WHEREAS**, Defendant denies the occurrence of the violations alleged in the Clean  
3 Water Act Notice Letter and maintains that MFP has complied at all times with the provisions  
4 of the Revised General Permit and the Clean Water Act or, alternatively, that there are no  
5 “ongoing and continuous” violations of the Revised General Permit or the Act;

6 **WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter as  
7 to all entities and persons named in the Clean Water Act Notice Letter without litigation and  
8 enter into this Consent Agreement (“Agreement”);

9 **WHEREAS**, on or about March 8, 2017, CSPA filed a complaint against Defendant in  
10 the United States District Court, Northern District of California (this matter is hereinafter  
11 referred to as “the Action”);

12 **WHEREAS**, for purposes of this Agreement only, the Parties stipulate that venue is  
13 proper in this Court, and that Defendant does not contest the exercise of jurisdiction by this  
14 Court to dismiss this matter with prejudice under the terms of this Agreement;

15 **WHEREAS**, within five (5) calendar days of mutual execution, this Agreement shall  
16 be submitted to the Attorney General, United States Department of Justice, Citizen Suit  
17 Coordinator and the Administrator, Environmental Protection Agency, for the 45-day statutory  
18 review period, pursuant to 33 U.S.C. § 1365(c);

19 **WHEREAS**, at the time the Agreement is submitted for approval to the United States  
20 District Court, CSPA shall submit a Notice of Settlement to the Court and inform the Court of  
21 the expected dismissal date following the expiration of the statutory 45-day review period  
22 identified above;

23 **AND WHEREAS**, within ten (10) calendar days of expiration of the statutory review  
24 period, or the earlier receipt of non-objection from the United States Department of Justice, the  
25 Parties shall file with the Court a Stipulation and Order that shall provide that the Complaint  
26

1 and all claims therein shall be dismissed with prejudice pursuant to Federal Rule of Civil  
2 Procedure 41(a)(2) concurrently with the Court's retention of jurisdiction for the enforcement  
3 of this Agreement as provided herein (the date of entry of the Order to dismiss shall be  
4 referred to herein as the "Court Approval Date").

5 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**  
6 **SETTLING PARTIES AS FOLLOWS:**

7 **I. COMMITMENTS OF DEFENDANT**

8 **1. Compliance with Revised General Permit and the Clean Water Act.**

9 Throughout the term of this Agreement, MFP shall continue implementing all measures  
10 needed to operate the Facility in compliance with the requirements of the Revised General  
11 Permit, and the Clean Water Act, subject to any defenses available under the law.

12 **2. Implementation of Specific Storm Water Best Management Practices and**  
13 **Other Storm Water Management Measures.** Subject to Paragraph IV.25 of this Agreement  
14 (defining force majeure events), MFP shall implement the following storm water source  
15 control measures/Best Management Practices ("BMPs") at the Facility on or before the dates  
16 shown below.

17 (a) *Mandatory Minimum Best Management Practices.* On or before December 1,  
18 2017, MFP shall implement the Mandatory Minimum BMPs as set forth in the Revised  
19 General Permit at Section X.H.1.

20 **Drainage Areas 004, 011, 012, 021 and 025**

21 (b) *Interim Reconfiguration of Drainage Areas 004, 012, 021 and 025.* During the  
22 2017-2018 Reporting Year (July 1, 2017-June 30, 2018), MFP shall reconfigure, manage and  
23 monitor Drainage Areas ("DAs") 004 and 012 and new DA 025 covering the area southeast of  
24 the Forestry Building, with berms added as needed to route all flows to designated discharge  
25 points ("DPs") established or reestablished at the fence line by December 1, 2017, until the  
26 completion of the reconfiguration of DAs 004 and 012 and new DA 025 discussed in

1 Paragraphs I.2(c)-(j) below that will occur by October 1, 2018. DP 004 will be reestablished  
2 at a new drop inlet inside the fence line. The drop inlet shall be constructed to allow for  
3 sampling of the water entering the drop inlet from the culvert near the bottom that conveys  
4 storm water from the other DA 004 drop inlets, thereby allowing for representative sampling  
5 of DA 004. MFP shall eliminate DP 021 as a designated sampling point on or before  
6 December 1, 2017. See **Exhibit A, 2017 Facility Map**.

7 **Drainage Area 025.**

8 (c) *Reconfiguration of Drainage Area 025.* On or before October 1, 2018, MFP  
9 shall reconfigure the drainage in the unpaved area southeast of the Forestry Building (New  
10 Drainage Area 025) to facilitate flow to the infiltration BMP described in Paragraph I.2(d) and  
11 ultimately to DP 025. See **Exhibit A, 2018 Facility Map and Exhibit C, Infiltration BMPs**  
12 **Dimensions Table.**

13 (d) *Construction of New Infiltration BMP Southeast of Forestry Building in DA 025*  
14 *and Routing of Flows from DA 004 and DA 012.* On or before October 1, 2018, MFP shall  
15 construct a new infiltration BMP (based on the engineered drawings attached hereto as  
16 **Exhibit D**) in the southeastern portion of the Facility that will receive flows from DAs 025,  
17 004 and 012 (See **Exhibit A, 2018 Facility Map**). (The design drawings for the storm water  
18 conveyance system routing all flows from DAs 004, 012 and 025 to the new infiltration BMP  
19 in DA 025 are attached hereto as **Exhibit E**.)

20 (e) *Installation of Berms Along Eastern Fence Line in Drainage Area 025.* On or  
21 before October 1, 2018, MFP shall install additional berms, including at the fence line along  
22 the Russian River, as necessary, to direct all flows in DA 025 to the new infiltration BMP and  
23 DP 025. See **Exhibit A, 2018 Facility Map**.

24 **Drainage Area 004**

25 (f) *Drop inlet protection in DA 004.* On or before December 1, 2017, MFP shall  
26



1 place additional wattles and/or other functionally equivalent drop inlet protection at all drop  
2 inlets in DA 004. See **Exhibit A, 2017 Facility Map**.

3 (g) *Rerouting of Storm Water from DA 004*. On or before October 1, 2018, MFP  
4 shall install a culvert and/or pump, if needed, to route all flows from DA 004 to the new  
5 infiltration BMP in DA 025 and shall change the Discharge Point for all flows from DA 004 to  
6 the Discharge Point from the infiltration BMP in DA 025. See **Exhibit A, 2018 Facility Map**.

7 (h) *Installation of Berms Along Eastern Fence Line in Drainage Area 004*. On or  
8 before October 1, 2018, MFP shall install additional berms, including at the fence line along  
9 the Russian River, as necessary, to direct all flows in DA 004 to the new infiltration BMP in  
10 DA 025. When this reconfiguration is complete, DA 004 will become part of DA 025. See  
11 **Exhibit A, 2018 Facility Map**.

12 **Drainage Area 012**

13 (i) *Rerouting of Storm Water from DA 012*. On or before October 1, 2018, MFP  
14 shall reroute all flows from DA 012 to the new infiltration BMP in DA 025 and shall change  
15 the Discharge Point for all flows from DA 012 to DP 025. See **Exhibit A, 2018 Facility Map**.

16 (j) *Installation of a Perimeter Berm in Drainage Area 012*. On or before October 1,  
17 2018, MFP shall install a continuous perimeter berm that directs all surface flows to the new  
18 infiltration BMP in DA 025. When this reconfiguration is complete, DA 012 will become part  
19 of DA 025.

20 **Drainage Area 011**

21 (k) *Excavation of Ditch Between the Forestry Building and the Lumber Storage*  
22 *Area*. On or before December 1, 2017, MFP shall excavate the ditch in DA 011 between the  
23 Forestry Building and the lumber storage area yard to increase capacity and infiltration. See  
24 **Exhibit A, 2017 Facility Map** and **Exhibit C, Infiltration BMPs Dimensions Table**. MFP  
25 shall line the sides of the ditch with staked wattles where sheet flow enters the ditch.

1 (l) *Reestablishment of DP 011 at the Property Fence Line.* On or before December  
2 1, 2017, MFP shall reestablish DP 011 at the property fence line with a discharge pipe through  
3 a raised earthen and rip/rap berm. See **Exhibit F, As-Built Drawings of DP 011.**

4 (m) *Perimeter Berming.* On or before October 1, 2017, MFP shall install perimeter  
5 berms as needed to all direct sheet flow to the reestablished DP 011 or new DP 025 (see  
6 alternative reconfigure immediately below).

7 (n) *Alternative Reconfiguration of Drainage Area 011.* On or before October 1,  
8 2018, MFP may reconfigure DA 011 to route storm water from DA 011 to the new infiltration  
9 BMP in DA 025 that will serve former DA. 004, former DA 012 and new DA 025. In the  
10 event that MFP elects to do so, it shall notify CSPA on or before June 1, 2018.

11 **Drainage Areas 008, 019 and 022**

12 (o) *Drainage Areas 008, 019 and 022.* The DPs for 008, 019 and 022 shall remain  
13 separate. For the 2017-2018 Reporting Year, each of these DAs shall be sampled at their  
14 current DPs.

15 **Drainage Area 008**

16 (p) *Upgrade Planer Cyclone.* On or before November 1, 2017, MFP shall complete  
17 the upgrading of the planer cyclone to improve byproducts handling to reduce potential  
18 exposure of byproducts (shavings and saw dust) to storm water.

19 (q) *Construction of New Infiltration BMP in DA 008.* On or before October 1, 2018,  
20 MFP shall construct a new infiltration EMP adjacent to the north end of DA 022. See **Exhibit**  
21 **A, 2018 Facility Map** for location of infiltration BMP and **Exhibit C, Infiltration BMPs**  
22 **Dimensions Table** for approximate dimensions. MFP shall prepare construction drawings for  
23 this infiltration BMP, with a level of detail similar to those as-built drawings prepared under  
24 Paragraph I.2(l), above, and provide them to CSPA by June 1, 2018 pursuant to the notice  
25 provisions below.

1 (r) *Connection and Maintenance of Drop Inlets Leading to New Infiltration BMP.*  
2 On or before October 1, 2018, MFP shall connect the two existing drop inlets to the new  
3 infiltration BMP discussed in Paragraph I.2(q). The existing easterly drop inlet includes a  
4 two-celled concrete infiltration BMP with a permeable bottom (allowing for infiltration) and  
5 with down flow discharge pipes to capture settleable and floating materials.

6 (s) *Installation of Concrete Vault at Current Discharge Point 008.* On or before  
7 October 1, 2018, MFP shall install a concrete vault at the location of the current sediment trap  
8 at current DP 008 (as of 2017) that will redirect storm water from DA 008 to the new  
9 infiltration BMP.

10 (t) *Change of Boundary between Drainage Areas 008 and 022.* On or before  
11 October 1, 2018, MFP shall regrade DAs 008 and 022 as necessary to move the boundary  
12 between DA 008 and DA 022 so as to include within DA 008 the area (formerly within DA  
13 022) where the new infiltration BMP will be located. See **Exhibit A, 2018 Facility Map.**

14 (u) *Reestablishment of Discharge Point 008.* On or before October 1, 2018, MFP  
15 shall reestablish DP 008 at or near the fence line at the outfall of the new infiltration BMP in  
16 DA 008. See **Exhibit A, 2018 Facility Map.**

17 (v) *Installation of Berms Along Hensley Creek.* On or before October 1, 2018, MFP  
18 shall add berms along Hensley Creek as needed to direct all sheet flow to the new infiltration  
19 BMP discussed in (q) above. See **Exhibit A, 2018 Facility Map.**

20 **Drainage Area 022**

21 (w) *Reestablishment of Discharge Point 022.* On or before October 1, 2018, MFP  
22 shall relocate and reestablish DP 022 at the existing infiltration BMP in DA 022 and  
23 reconfigure berms to direct sheet flow to the infiltration BMP in light of the relocation of the  
24 boundary between DAs 022 and 008. See **Exhibit A, 2018 Facility Map.**

25 (x) *Interim installation of Berms in Drainage Area 022 in 2017.* On or before  
26



December 1, 2017, MFP shall install berms as needed along the roadway/fence, directing all sheet flow to existing DP 022, either directly or through the existing infiltration BMP.

**Drainage Area 019**

(y) *Enhancement of Infiltration BMP at Drainage Area 019.* On or before December 1, 2017, MFP shall enhance the existing infiltration BMP by creating a depression within the constraints of available space to retain storm water flow and enhance infiltration.

See **Exhibit A, 2017 Facility Map** for location and **Exhibit C, Infiltration BMPs Dimensions Table** for the approximate dimensions of this infiltration BMP.

(z) *Establishment of Drainage Point 019.* On or before December 1, 2017, MFP shall reestablish DP 019 at the infiltration BMP.

(aa) *Installation of Berms at Drainage Area 019.* On or before December 1, 2017, MFP shall install additional berms in DA 019 as needed to direct all flows to the infiltration BMP and DP 019.

**Drainage Area 015**

(bb) *Expansion of Infiltration BMP for Drainage Area 015.* On or before December 1, 2017, MFP shall enlarge the infiltration BMP for DA 015 by extending it northward and moving the location of the DP to the northeast corner of the drainage area. See **Exhibit A, 2017 Facility Map** for location of infiltration BMP. See also **Exhibit G, As-Built Drawing of DP 015** and **Exhibit C, Infiltration BMPs Dimensions Table** for approximate dimensions.

(cc) *Installation of Berms.* On or before December 1, 2017, MFP shall install berms as needed to route all flows in DA 015 to the infiltration BMP and reestablished DP 015.

**Drainage Areas 001 and 017**

(dd) *Elimination of Boneyards in Drainage Areas 001 and 017.* On or before December 1, 2017, MFP shall eliminate the boneyard in DA 001 located between the sorter building and the railroad tracks and the boneyard in DA 017 located between the millwright

shop and the log yard.

(ee) *Combination of Drainage Areas 001 and 017.* On or before October 1, 2018, MFP shall regrade as needed and combine DAs 001 and 017. MFP shall route all flows from existing DA 017 to the DA 001 infiltration BMP. See **Exhibit A, 2018 Facility Map**.

(ff) *Expansion of Drainage Area 001 Infiltration BMP.* On or before October 1, 2018, MFP shall expand the existing DA 001 infiltration BMP along the railroad tracks by dredging it to a lower depth and shall provide for ongoing maintenance of this infiltration BMP to increase and maintain retention capacity and infiltration.

(gg) *Expansion of Infiltration Area in West Field Before Discharge.* On or before October 1, 2018, MFP shall reroute drainage from the expanded infiltration BMP in DA 001 to allow flow into the West Field for further infiltration and ultimate discharge in the northern portion of the Facility at DP 023. When this reconfiguration is complete, DAs 001 and 017 will become part of DA 023. See **Exhibit A, 2018 Facility Map** for the locations and **Exhibit C, Infiltration BMPs Dimensions Table** for the approximate dimensions of these BMPs.

#### **Drainage Area 023**

(hh) *Reconfiguration of Drainage Area 023.* On or before October 1, 2018, MFP shall improve its existing storm water system by directing storm water from the Log Yard through the storm water diversion valve to a new infiltration BMP in the East Field with a new DP 024 into Hensley Creek. When this reconfiguration is complete, the Log Yard will become part of DA 024. See **Exhibit A, 2018 Facility Map** for the location and **Exhibit C, Infiltration BMPs Dimensions Table** for the approximate dimensions of this BMP.

#### **Drainage Area 018**

(ii) *Installation of Berms Along Hensley Creek Frontage in Drainage Area 018.* On or before December 1, 2017, MFP shall install a continuous berm on the west side of the bridge located near the middle of DA 018 that will direct all sheet flow to a single DP, entitled

1 DP 018W, on the west side of the bridge. By the same date, MFP shall install a continuous  
2 berm on the east side of the same bridge to direct all sheet flow to a new DP, entitled DP  
3 018E, on the east side of the bridge. See **Exhibit A, 2017 Facility Map**.

4 (jj) *Installation of Infiltration BMPs in Drainage Area 018*. On or before December  
5 1, 2017, MFP shall install an infiltration BMP in the western portion of DA 018 and an  
6 infiltration BMP in the eastern portion of DA 018. See **Exhibit A, 2017 Facility Map** for the  
7 locations and **Exhibit C, Infiltration BMPs Dimensions Table** for the approximate  
8 dimensions of these BMPs.

9 (kk) *Regrading and Paving of Drainage Area 018*. On or before December 1, 2017,  
10 MFP shall regrade and pave DA 018 as needed to ensure that there is a drainage divide  
11 separating storm water in DA 018 and storm water in DA 006. Further, MFP shall ensure that  
12 no treated wood is stored within DA 018. See **Exhibit A, 2017 Facility Map**.

13 **Drainage Area 006**

14 (ll) *Industrial Materials in Drainage Area 006*. On or before December 1, 2017,  
15 MFP shall ensure that no industrial material is stored in the designated non-industrial use area  
16 and that no industrial activities take place in the non-industrial use area. See **Exhibit A, 2017**  
17 **Facility Map**. On or before December 1, 2017, MFP shall install berms to separate the  
18 industrial area of DA 006 from the nonindustrial area, and to prevent any run-on from entering  
19 the industrial portion of DA 006. See **Exhibit A, 2017 Facility Map**.

20 **Drainage Area 020**

21 (mm) *Evaluation of Drainage Area 020*. MFP shall continue to observe DA 020 as  
22 part of ongoing yard maintenance, logging any discharge events in DA 020 as required by the  
23 Facility's then-current Storm Water Pollution Prevention Plan ("SWPPP").

24  
25 **Facility-Wide BMPs**

1 (nn) *Improved Sweeping Protocols.* On or before January 1, 2018, MFP shall  
2 incorporate its recently acquired sweeper into its sweeping program set forth in the Facility's  
3 SWPPP. For the term of this Agreement, MFP shall, weather permitting, sweep those  
4 accessible, paved portions of the Facility identified for sweeping in the SWPPP on a twice  
5 weekly basis during the period from October 1 through May 31 and weekly during the period  
6 from June 1 through September 30. These sweeping activities shall be incorporated in the  
7 employee training referenced below and the personnel and date conducted logged as required  
8 by the Facility's then-current SWPPP.

9 (oo) *Covering Drop Inlets During the Dry Season.* MFP shall cover all drop inlets  
10 during the period from June 1 through September 30.

11 (pp) *Improved Facility Mapping.* On or before November 15, 2017, MFP shall  
12 conduct an elevation survey of the Facility to confirm its topography, drainage area boundaries  
13 and sheet flow directions. The survey shall be shared with CSPA on or before November 15,  
14 2017.

15 (qq) *Increased Employee Training.* On or before December 1, 2017, MFP shall  
16 increase training for MFP's Storm Water Pollution Prevention Team ("SWPPT"), including  
17 holding one training meeting in January and one training meeting in October of each year.  
18 MFP will incorporate the holding of these twice-annual meetings in the January 1, 2018  
19 revisions to its SWPPP. MFP shall target training on tracking what storm events qualify for  
20 sampling purposes, undertaking visual monitoring, and logging and properly reporting data as  
21 required by the Facility's then-current SWPPP and in the Annual Report and the State's on-  
22 line reporting system ("SMARTS"). MFP shall log these meetings with the date, materials  
23 covered, and a list of attendees for each, and shall retain these logs with the SWPPP. MFP  
24 shall have at least one member of the SWPPT, that meets the certification qualifications, be  
25 formally certified as a Qualified Industrial Storm Water Practitioner ("QISP");



1 (rr) *Rain Data.* On or before December 1, 2017, MFP shall install and maintain a  
2 fully automated rain gauge at the Facility.

3 **3. SWPPP Amendments.** On or before January 1, 2018, and thereafter within  
4 the time periods specified by the Section X.B of the Revised General Permit (within 30 days  
5 of implementing significant revisions and no less often than every three months when  
6 insignificant revisions are implemented), Defendant shall amend the Facility SWPPP and site  
7 map to incorporate all changes arising out of this Agreement. As required by the Revised  
8 General Permit, the SWPPP amendments shall reflect all then-current site conditions and  
9 practices and the pollutant source assessment, and identify the location of all pervious and  
10 impervious areas, drop inlets, BMPs, and storm water flow vectors. These revisions shall also  
11 provide for required data logging (including rain gauge data) and twice-annual storm water  
12 management training for Facility employees.

13 **4. Sampling Frequency.** For the 2017-2018, 2018-2019 and 2019-2020  
14 reporting years ending June 30<sup>th</sup> (2018, 2019 and 2020), in addition to the requirement of the  
15 Revised General Permit that Defendant, as a member of a compliance group, collect and  
16 analyze samples from at least one Qualifying Storm Event<sup>3</sup> ("QSE") in each half of the  
17 reporting year (July 1 to December 31, and January 1 to June 30), Defendant agrees to collect  
18 and analyze samples from two (2) additional QSEs during each half of the reporting years  
19 ending June 30<sup>th</sup> (2018, 2019, and 2020). Following the applicable procedures set forth in the  
20 Revised General Permit Section XII.A, all storm water sample results, including all additional  
21 samples taken pursuant to this Agreement, shall be averaged and compared with the applicable  
22 \_\_\_\_\_  
23

24 <sup>3</sup> A Qualifying Storm Event is defined in the Revised General Permit as a precipitation event that: (a)  
25 produces a discharge for at least one drainage area; and (b) is preceded by 48 hours with no discharge  
26 from any drainage area. See Revised General Permit, Section XI.B.1.



NALs for the parameters set forth in **Exhibit H**, attached hereto, and incorporated herein by reference. In the event that the parameters and NALs in the Revised General Permit should change during the term of this Agreement, causing a conflict with the values incorporated in **Exhibit H**, the values set forth in the Revised General Permit shall prevail. If the results of sampling discussed herein exceed the applicable NALs set forth in **Exhibit H**, Defendant shall comply with the applicable requirements of the Revised General Permit, including the applicable Exceedance Response Action (“ERA”) described in Sections I.M and XII of the Revised General Permit. Any Level 1 ERA Evaluation required under Section XII.C.1 of the Revised General Permit during the term of this Agreement shall be memorialized in a memorandum and shared with Plaintiff pursuant to the Notice provisions of this Agreement on or before its due date (October 1); at Plaintiff’s request, the parties shall meet and confer regarding the sufficiency of the evaluation. Any Level 1 ERA Report required under Section XII.C.2 of the Revised General Permit during the term of this Agreement shall be shared with Plaintiff pursuant to the Notice provisions of this Agreement on or before its due date (January 1); at Plaintiff’s request, the parties shall meet and confer regarding the sufficiency of the report. Any Level 2 ERA Action Plan required under Section XII.D.1 of the Revised General Permit during the term of this Agreement shall be shared with Plaintiff pursuant to the Notice provisions of this Agreement on or before its due date (January 1); at Plaintiff’s request, the parties shall meet and confer regarding the sufficiency of the plan. Any Level 2 ERA Technical Report required under Section XII.D.2 of the Revised General Permit during the term of this Agreement shall be shared with Plaintiff pursuant to the Notice provisions of this Agreement on or before its due date (January 1); at Plaintiff’s request, the parties shall meet and confer regarding the sufficiency of the report.

**5. Sampling Parameters, Methods and Reporting.** Each sample taken pursuant to the requirements of this Agreement and/or under the Revised General Permit in

1 each reporting year shall be analyzed for each of the constituents listed in **Exhibit H**, as  
2 applicable, by a laboratory accredited by the State of California. All such samples collected  
3 from the Facility shall be delivered to the laboratory as soon as possible to ensure that sample  
4 "hold time" is not exceeded. Analytical methods used by the laboratory shall comply with  
5 Revised General Permit requirements in regards to both test method and detection limit. See  
6 Revised General Permit, Table 2, at 43. All sampling results shall be provided to CSPA  
7 within thirty (30) days of Defendant's receipt of the laboratory report from each sampling  
8 event, pursuant to the Notice provisions below.

9       **6. "Action Memorandum" Trigger; CSPA's Review Of "Action**  
10 **Memorandum"; Meet-and-Confer.** If MFP fails to collect and analyze samples as provided  
11 in Paragraph 4 at any time during the term of the agreement, MFP shall prepare a written  
12 statement discussing the failure to collect and analyze samples as provided in Paragraph 4 and  
13 additional sampling-related measures that will be taken to address and eliminate future failures  
14 to collect required samples ("Action Memorandum").

15       The Action Memorandum, if triggered, shall be provided to CSPA not later than August  
16 15 following the conclusion of each reporting year, on June 30. Additional measures  
17 described in the Action Memorandum shall be implemented as soon as feasible, and in no  
18 event later than October 1 following the Action Memorandum deadline. The Facility SWPPP  
19 shall be amended to include all additional sampling-related measures designated in the Action  
20 Memorandum within the time limits provided by the Revised General Permit. CSPA may  
21 review and comment on an Action Memorandum and suggest any additional sampling-related  
22 measures it believes are appropriate; however, CSPA's failure to do so shall not be deemed to  
23 constitute agreement with the proposals set forth in the Action Memorandum. Upon request  
24 by CSPA, Defendant agrees to meet and confer in good faith (may be conducted by telephone)  
25 regarding the contents and sufficiency of the Action Memorandum.

7. **Inspections During The Term Of This Agreement.** Following the mutual execution of this Consent Agreement, Defendant shall permit representatives of CSPA to perform up to three (3) physical inspections of the Facility during the term of this Agreement. These inspections shall be performed in accordance with the terms of the Site Access Agreement attached hereto as **Exhibit I** by CSPA's counsel and consultants, and may include storm water sampling from discharge points established in the SWPPP (excluding dioxins as described in **Exhibit H**), photographing and/or videotaping, and CSPA shall provide Defendant with copies of all reports, photographs and/or video. The parties and their counsel understand, stipulate and agree all such sample reports, photographs and videotapes shall be deemed confidential and/or proprietary for the term of this Agreement, and shall not be disclosed to any third party unless pursuant to a subpoena or Court order, in which event CSPA shall provide Defendant with prompt notice of such subpoena or Court order. However, nothing herein shall prevent CSPA from using such evidence in the context of a motion to enforce this agreement, or, after this Agreement expires, in any future legal proceeding. CSPA shall provide at least five (5) business days advance notice of such physical inspection, except that Defendant shall have the right to deny access if circumstances would make the inspection unduly burdensome and pose significant interference with business operations or any party/attorney, or the safety of individuals. In such case, Defendant shall specify at least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed. Defendant shall not make any alterations to Facility conditions during the period between receiving CSPA's initial five days advance notice and the start of CSPA's inspection that Defendant would not otherwise have made but for receiving notice of CSPA's request to conduct a physical inspection of the Facility, excepting any actions taken in compliance with any applicable laws or regulations. Nothing herein shall be construed to prevent Defendant from continuing to implement any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.



1 In the event that CSPA concludes that changes to the monitoring program described in the  
2 SWPPP and/or **Exhibit H** are needed, CSPA shall notify MFP of its recommendations. If the  
3 parties disagree, the Parties shall meet and confer within fourteen (14) days of receiving written  
4 notification from the other Party of a request for a meeting, which may be held by telephone, to  
5 develop a mutually agreed upon plan, including implementation dates, to resolve the dispute. If  
6 the Parties cannot mutually agree to a resolution, either Party may issue a written request for  
7 mediation. Within thirty (30) days after delivery of the written notification, the parties shall  
8 endeavor to settle the dispute by mediation. The Parties mutually agree that Bruce Winkelman  
9 shall serve as the mediator. In the event that Mr. Winkelman is unavailable, the parties shall  
10 select a mutually acceptable alternate mediator who is available to serve within the proscribed  
11 thirty (30) days. If the Parties fail to mediate, or the mediation does not resolve the issue, after  
12 at least fourteen (14) days have passed after the mediation occurred or should have occurred,  
13 either Party shall be entitled to all rights and remedies under the law as provided under the  
14 dispute resolution provisions of Paragraph 13.

15 **8. Communications To/From Regional and State Water Boards.** During the  
16 term of this Agreement, MFP shall provide CSPA with copies of all documents, or pertinent  
17 portions of documents (redaction of non-pertinent portions of documents is permissible<sup>4</sup>)  
18 submitted to, or received from, the Regional Water Board or the State Water Board concerning  
19 Revised General Permit compliance at the Facility, and that are not uploaded by MFP to  
20 SMARTS, pursuant to the Notice provisions set forth below within seven (7) days of  
21 submission(s) to, or, receipt from, such agencies. MFP shall notify CSPA of any documents  
22 uploaded to SMARTS within seven (7) days of MFP's submission or, in the case of  
23 \_\_\_\_\_  
24 \_\_\_\_\_

25 <sup>4</sup> In the event that any of these redactions are challenged, the Parties shall request that the Court  
26 review the unredacted documents *in camera* to resolve any disputes.

documents uploaded by the agencies, within seven (7) days of MFP's receipt of notice of such uploading.

**9. Notification to CSPA Regarding SWPPP Amendments.** Pursuant to the Notice provisions set forth below, MFP shall notify CSPA of the issuance of any revised Facility SWPPP within three (3) days of the revised SWPPP being uploaded to SMARTS and certified during the term of the Agreement.

## **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

**10. Mitigation Payment In Lieu Of Civil Penalties Under the Clean Water Act.** As mitigation to address any potential harms from the Clean Water Act violations alleged in the CSPA Complaint, Defendant agrees to pay the sum of \$87,500 to the Rose Foundation for Communities and the Environment ("Rose Foundation") for physical projects to improve water quality on the Russian River, with priority given to projects addressing fire impacts to the Russian River watershed from the 2017 fires in Northern California. The Rose Foundation shall give due consideration to project recommendations that are made by MFP by January 1, 2018. Such mitigation payment shall be remitted directly to the Rose Foundation at: Rose Foundation, Attn: Tim Little, 1970 Broadway, Suite 600, Oakland, CA 94612 within ten (10) days of the Court Approval Date.

**11. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs associated with monitoring Defendant's compliance with this Agreement, Defendant agrees to contribute \$5,000 for the first year and \$10,000 for each of the following two years covered by this Agreement (\$25,000 total for the life of the Agreement), to a compliance monitoring fund maintained by counsel for CSPA as described below. Payment shall be made payable to the "Law Offices of Andrew L. Packard Attorney-Client Trust Account" and remitted to Plaintiff's counsel within ten (10) days of the Court Approval Date. Compliance monitoring activities may include, but shall not



1 be limited to, site inspections, review of water quality sampling reports, review of annual  
2 reports, discussions with Defendant concerning the Action Memorandum referenced above,  
3 and potential changes to compliance requirements herein.

4       **12. Reimbursement of Fees & Costs.** Defendant agrees to reimburse CSPA in  
5 the amount of \$167,500 to defray CSPA's reasonable investigative, expert, consultant, and  
6 attorneys' fees and costs, and all other costs incurred as a result of investigating the activities  
7 at the Facility, bringing the Action, and negotiating a resolution of this Action in the public  
8 interest. Such payment shall be made payable to the "Law Offices of Andrew L. Packard  
9 Attorney Client Trust Account" and remitted to the firm within ten (10) days after the Court  
10 Approval Date.

11 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

12       **13.** With the exception of the timelines set forth above for addressing exceedances  
13 of the values specified in the **Exhibit H**, if a dispute under this Agreement arises, or either  
14 Party believes that a breach of this Agreement has occurred, the Parties shall meet and confer  
15 within fourteen (14) days of receiving written notification from the other Party of a request for  
16 a meeting (all such meetings may be held by telephone) to determine whether a breach has  
17 occurred and/or to develop a mutually agreed upon plan, including implementation dates, to  
18 resolve the dispute. If the Parties cannot mutually agree to a plan to resolve the dispute, either  
19 Party shall be entitled to all rights and remedies under the law, including filing a motion with  
20 the District Court of California, Northern District, which shall retain jurisdiction over the  
21 Action until the Termination Date for the limited purposes of enforcement of the terms of this  
22 Agreement. The Parties shall be entitled to seek fees and costs incurred in any such motion,  
23 and such fees and costs shall be awarded, pursuant to the provisions set forth in the then-  
24 applicable federal Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure, and  
25 applicable case law interpreting such provision.

1           **14. CSPA's Waiver and Release.** Upon the Court Approval Date of this  
2 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors,  
3 assigns, directors, officers, agents, attorneys, representatives, and employees, releases  
4 Defendant and its officers, directors, employees, shareholders, parents, subsidiaries, and  
5 affiliates, and each of its predecessors, successors and assigns, and each of their agents,  
6 attorneys, consultants, and other representatives (each a "Released Defendant Party") from,  
7 and waives all claims which arise from or pertain to the Action, that were asserted or could  
8 have been asserted based on the facts alleged in the Action, including, without limitation, all  
9 claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including  
10 fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or  
11 which could have been claimed in this Action, for the alleged failure of Defendant to comply  
12 with the Clean Water Act or the Revised General Permit at the Facility, up to the Court  
13 Approval Date.

14           **15. Defendant's Waiver and Release.** Defendant, on its own behalf and on  
15 behalf of any Released Defendant Party under its control, release CSPA (and its officers,  
16 directors, employees, members, parents, subsidiaries, and affiliates, and each of their  
17 successors and assigns, and its agents, attorneys, and other representatives) from, and waives  
18 all claims which arise from or pertain to the Action, that were asserted or could have been  
19 asserted based on the facts alleged in the Action, including all claims for fees (including fees  
20 of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or  
21 which could have been claimed for matters associated with or related to the Action.

22 **IV. MISCELLANEOUS PROVISIONS**

23           **16.** The Parties enter into this Agreement for the purpose of avoiding prolonged  
24 and costly litigation. Nothing in this Agreement shall be construed as, and Defendant  
25 expressly does not intend to imply, an admission as to any fact, finding, issue of law, or  
26

1 violation of law, nor shall compliance with this Agreement constitute or be construed as an  
2 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law.  
3 However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities,  
4 and duties of the Parties under this Agreement.

5 17. The Agreement shall be effective upon mutual execution by all Parties. The  
6 Agreement shall terminate on the "Termination Date," which shall be November 30, 2020.

7 18. The Agreement may be executed in one or more counterparts which, taken  
8 together, shall be deemed to constitute one and the same document. An executed copy of this  
9 Agreement shall be valid as an original.

10 19. In the event that any one of the provisions of this Agreement is held by a court  
11 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

12 20. The language in all parts of this Agreement, unless otherwise stated, shall be  
13 construed according to its plain and ordinary meaning. This Agreement shall be construed  
14 pursuant to the law of the United States, without regard to choice of law principles.

15 21. The undersigned are authorized to execute this Agreement on behalf of their  
16 respective Parties and have read, understood and agreed to be bound by all of the terms and  
17 conditions of this Agreement.

18 22. All agreements, covenants, representations and warranties, express or implied,  
19 oral or written, of the Parties concerning the subject matter of this Agreement are contained or  
20 referenced herein. This Agreement and its attachments are made for the sole benefit of the  
21 Parties, and no other person or entity shall have any rights or remedies under or by reason of  
22 this Agreement, unless otherwise expressly provided for therein.

23 23. **Notices.** Any notices or documents required or provided for by this  
24 Agreement or related thereto that are to be provided to CSPA pursuant to this Agreement shall  
25 be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
26

1 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

2 William Jennings, Executive Director  
3 California Sportfishing Protection Alliance  
4 3536 Rainer Avenue  
5 Stockton, California 95204  
6 Tel. (209) 464-5067  
7 E-mail: deltakeep@me.com

8 With copies sent to:

9 Andrew L. Packard  
10 Law Offices of Andrew L. Packard  
11 245 Kentucky Street, Suite B3  
12 Petaluma, California 94952  
13 Tel: (707) 782-4060  
14 E-mail:  
15 andrew@packardlawoffices.com  
16 wncarlon@packardlawoffices.com

17 Any notices or documents required or provided for by this Agreement or related thereto that  
18 are to be provided to Defendant pursuant to this Agreement shall be sent by U.S. Mail, postage  
19 prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail  
20 transmission to the email addresses listed below:

21 Jim Pelkey  
22 Mendocino Forest Products Company, LLC  
23 Chief Financial Officer  
24 3700 Old Redwood Highway, Suite #200  
25 Santa Rosa, CA 95403  
26 Tel: (707) 620-2961  
27 E-mail: jpelkey@mendoco.com

28 With copies sent to:

Wayne M. Whitlock  
2550 Hanover Street  
Palo Alto, CA 94304  
Tel: (650) 233-4500  
wayne.whitlock@pillsburylaw.com

Each Party shall promptly notify the other of any change in the above-listed contact information.



1           24.       Signatures of the Parties transmitted by facsimile or email shall be deemed  
2 binding.

3           25.       *Force Majeure.* MFP shall not be considered to be in default in the  
4 performance of any of its obligations under this Agreement when a failure to perform is due to  
5 a “force majeure event.” Any event or combination of events that is beyond the control of  
6 MFP and that prevents timely performance of any obligation under this Agreement, despite  
7 MFP’s reasonable efforts to fulfill that obligation, is a *force majeure* event. In exercising its  
8 reasonable efforts, MFP must anticipate any potential *force majeure* event and address the  
9 effects of such event as it is occurring and, following such event, minimize any delay to the  
10 greatest reasonable extent; provided that MFP shall not be required to settle a strike, lockout,  
11 work slowdown, work stoppage or other labor dispute on terms it determines are not  
12 commercially reasonable. *Force majeure* does not include financial inability to fund or  
13 complete the obligation or any event within MFP’s control, but does include, without  
14 limitation, any act or combination of acts of God, war, fire, earthquake, flood, rainstorm,  
15 windstorm, natural catastrophe, unexpected and unintended accidents, civil disturbance,  
16 vandalism, sabotage, terrorism, restraint by court order and public authority, any action or  
17 inaction by a public authority, and/or the inability to timely obtain any necessary governmental  
18 authorizations or approvals.

19           26.       If for any reason the Court should decline to approve this Agreement in the  
20 form presented, the Parties shall use their best efforts to work together to modify the  
21 Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable  
22 to modify this Agreement in a mutually acceptable manner, this Agreement shall become null  
23 and void.

24           27.       This Agreement shall be deemed to have been drafted equally by the Parties,  
25 and shall not be interpreted for or against any Settling Party on the ground that any such party  
26



1 drafted it.

2       28.       This Agreement and the attachments contain all of the terms and conditions  
3 agreed upon by the Parties relating to the matters covered by the Agreement, and, except as  
4 provided herein, supersede any and all prior and contemporaneous agreements, negotiations,  
5 correspondence, understandings, and communications of the Parties, whether oral or written,  
6 respecting the matters covered by this Agreement.

7       29.       This Agreement may be amended or modified only by a writing signed by the  
8 Parties or their authorized representatives.

9       The Parties hereto enter into this Agreement and respectfully submit it to the Court for  
10 its approval and entry.

11 Dated: November 9, 2017       California Sportfishing Protection Alliance

12  
13 By:

  
William Jennings, Executive Director

14  
15 Dated: November 14, 2017       Mendocino Forest Products Company, LLC

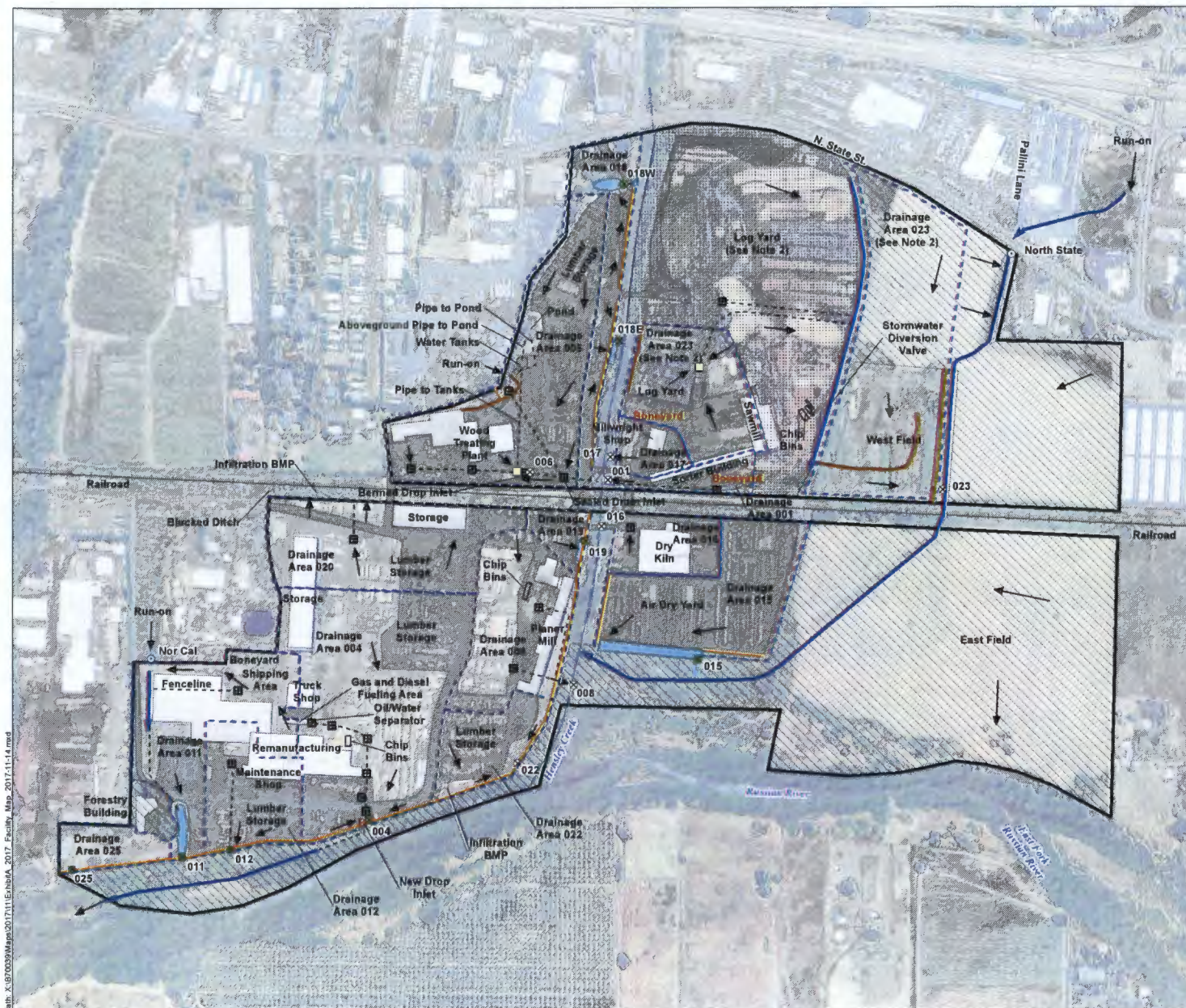
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17 By:

  
Jim Pelkey, Chief Financial Officer

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**EXHIBIT A – 2017 Facility Map and 2018 Facility Map**





# Legend

Potential Future BMPs  
(All locations, dimensions, and configurations are approximate)

- Berm (See Note 3)
- Stormwater Conveyance
- New Culvert
- New/Expanded Infiltration BMP Location
- Bonyard to be Dismantled
- Relocated or New Stormwater Monitoring Location
- New Drop Inlet

## Existing Site Features

- Existing Stormwater Monitoring Location
- Run-On Sampling Location
- Drop Inlet or Culvert Inlet
- Pump Station
- Stormwater Flow Direction
- Culvert
- Drainage Ditch
- Berm
- Drainage Area
- Areas of Impervious Pavement
- Non-Industrial Area
- Area subject to WDR
- Facility Boundary

## Abbreviations

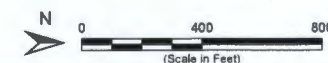
BMPs = Best Management Practices  
WDR = Waste Discharge Requirement

## Notes

1. All locations are approximate.
2. Drainage Area 023 includes the log yard when sprinkler water is not applied to the log decks and stormwater is diverted to the West Field. Drainage Area 023 also includes the southeastern log handling and storage area, where stormwater is collected at a pump station and then pumped to the West Field.
3. Berms will be installed as-needed to direct sheet flows to the applicable BMP or discharge point in Drainage Areas 004, 008, 011, 012, 015, 018, 019, 022 and 025.

## Sources

1. Aerial photograph provided by ESRI's ArcGIS Online, obtained 14 November 2017.



## 2017 Facility Map

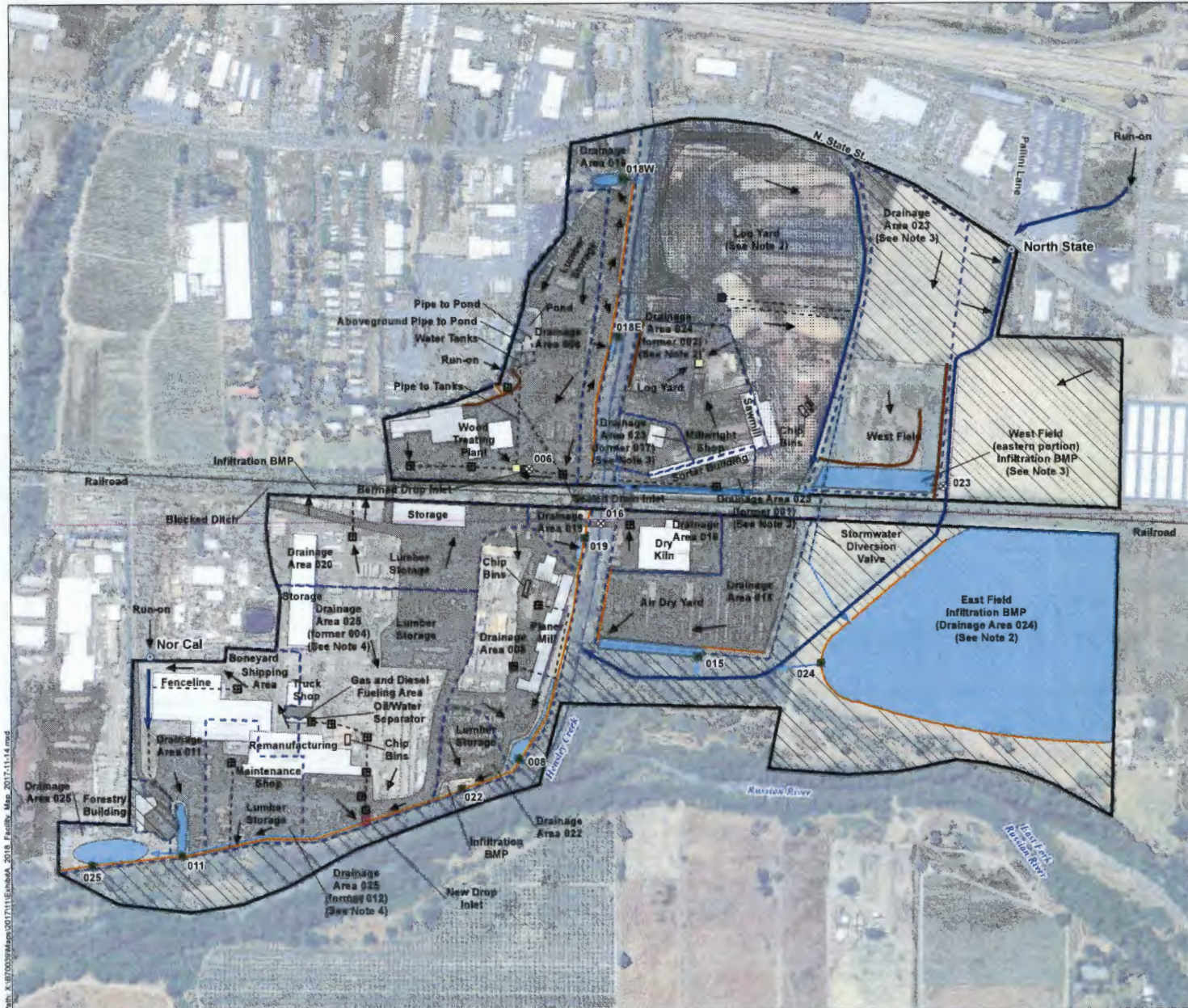
Mendocino Forest Products Ukiah Sawmill  
Ukiah, CA

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14 November 2017  
870039.00

Exhibit A





## Legend

### Potential Future BMPs

(All locations, dimensions, and configurations are approximate)

— Berm (See Note 5)

→ Stormwater Conveyance

— New Culvert

● New/Expanded Infiltration BMP Location

■ Boneyard to be Dismantled

● Relocated or New Stormwater Monitoring Location

■ New Drop Inlet

### Existing Site Features

⊗ Existing Stormwater Monitoring Location

● Run-On Sampling Location

■ Drop Inlet or Culvert Inlet

□ Pump Station

→ Stormwater Flow Direction

--- Culvert

— Drainage Ditch

— Berm

--- Drainage Area

■ Areas of Impervious Pavement

■ Non-Industrial Area

■ Area subject to WDR

□ Facility Boundary

## Abbreviations

BMPs = Best Management Practices

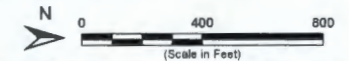
WDR = Waste Discharge Requirement

## Notes

1. All locations are approximate.
2. Stormwater in the log yard when sprinkler water is not being applied to the log decks will be diverted to a separate infiltration BMP in the East Field and ultimately discharge at Discharge Point 024. Stormwater in the southeastern log handling and storage area collected at the pump station will be diverted to a separate infiltration BMP in the East Field and ultimately discharge at Discharge Point 024.
3. Stormwater from Drainage Areas 017 and 001 will be diverted to the West Field for further infiltration and ultimately discharge at Discharge Point 023. When this reconfiguration is complete, Drainage Areas 017 and 001 will become part of Drainage Area 023.
4. Stormwater from Drainage Areas 004 and 012 will be diverted to an infiltration BMP in Drainage Area 025 and ultimately discharge at Discharge Point 025. When this reconfiguration is complete, Drainage Areas 004 and 012 will become part of Drainage Area 025.
5. Berms will be installed as-needed to direct sheet flows to the applicable BMP or discharge point in Drainage Areas 008, 011, 015, 018, 019, 022 and 025 (including former 004 and 012).

## Sources

1. Aerial photograph provided by ESRI's ArcGIS Online, obtained 14 November 2017.



## 2018 Facility Map

Mendocino Forest Products Ukiah Sawmill  
Ukiah, CA

14 November 2017

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Exhibit A

eki environment  
& water



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**EXHIBIT B – CWA Notice of Violation and Intent to Sue Letter**

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[PROPOSED] CONSENT AGREEMENT

LAW OFFICES OF  
**ANDREW L. PACKARD**

245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952

PHONE (707) 763-7227 FAX (707) 763-9227

INFO@PACKARDLAWOFFICES.COM

January 4, 2017

**VIA CERTIFIED MAIL**

Rodger Ferguson, Director EHS  
Mendocino Forest Products Company, LLC  
MFP Ukiah Sawmill  
850 Kunzler Ranch Road  
Ukiah, CA 95482

Corporation Service Company – Lawyers  
Incorporating Service,  
Agent for Service of Process  
Mendocino Forest Products Company, LLC  
1360 19th Hole Drive, Suite 200  
Windsor, CA 95492

**Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE  
FEDERAL WATER POLLUTION CONTROL ACT (“CLEAN WATER ACT”)  
(33 U.S.C. §§ 1251 *et seq.*)**

Dear Mr. Ferguson:

This firm represents California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“the Act”) occurring at Mendocino Forest Products Company, LLC’s (“MFP”) sawmill located at 850 Kunzler Ranch Road, in Ukiah, California (the “Facility”). This letter is being sent to you as the responsible owner, officer and/or operator of the Facility. Unless otherwise noted, Rodger Ferguson and Mendocino Forest Products Company, LLC shall hereinafter be collectively referred to as “MFP.” CSPA is a non-profit association dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which MFP discharges polluted storm water.

MFP is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 92-12-DWQ, Order No. 97-03-DWQ, and Order 2014-0057-DWQ (“General Permit” or “Permit”).<sup>1</sup> On July 1, 2015 the 2015 General Permit went into effect, superseding the 1997 General Permit that was operative between 1997 and June 30, 2015. The 2015 General Permit includes many of the same fundamental requirements and implements many of the same statutory requirements as the 1997 General Permit. Violation of both the 1997 and 2015 General Permit provisions is enforceable under the law. 2015 General Permit, Finding A.6.

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<sup>1</sup> MFP submitted a Notice of Intent (NOI) to comply with the General Permit for the Ukiah Facility on or about April 21, 2015.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects MFP to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The Clean Water Act requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2. As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CSPA intends to file suit under Section 505(a) of the Act in federal court against MFP for violations of the Clean Water Act and the Permit.

## **I. Background.**

### **A. The Clean Water Act.**

Congress enacted the CWA in 1972 in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco BayKeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env’tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act’s permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of a permit, is illegal. *Ecological Rights Found. v. Pacific Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California’s intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California’s State Board to issue individual and general NPDES permits in California. 33 U.S.C. § 1342.

### **B. California’s General Permit for Storm Water Discharges Associated with Industrial Activities**



Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which CSPA refers to as the "1997 General Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the General Permit was reissued, including many of the same fundamental terms as the prior permit. For purposes of this notice letter, CSPA refers to the reissued permit as the "2015 General Permit." The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit's requirement that annual reports be submitted by July 1, 2015, and for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.* Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA. The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and (3) self-monitoring and reporting requirements.

### **C. MFP's Ukiah Facility**

MFP's primary industrial activities at the approximately 120-176-acre Facility include log storage and handling, milling of lumber, lumber planing, fenceline operations, wood surface protection, lumber drying, lumber storage and shipping, maintenance of the manufacturing and rolling stock equipment and systems, and wood treating. The industrial activities at the Facility fall under Standard Industrial Classification ("SIC") Code 2421 ("Sawmills and Planing Mills, General").

MFP collects and discharges storm water associated with industrial activities at the Facility through at least twenty-three (23) discharge points into Hensley Creek which ultimately drains into the Russian River. Hensley Creek and the Russian River are waters of the United States within the meaning of the Clean Water Act.

The General Permit requires MFP to analyze storm water samples for TSS, pH, and Oil and Grease. 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6. Facilities under SIC Code 2421 must also analyze storm water samples for Chemical Oxygen Demand ("COD") and Zinc ("Zn"). 1997 General Permit, Tables 1-2; 2015 General Permit Tables 1-2.

## **II. MFP's Violations of the Act and Permit.**

Based on its review of available public documents, CSPA is informed and believes that MFP is in ongoing violation of both the substantive and procedural requirements of the CWA and the General Permit. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, MFP is subject to penalties for violations of the Act since January 4, 2012.



**A. MFP Discharges Storm Water Containing Pollutants in Violation of the General Permit's Discharge Prohibitions, Receiving Water Limitations and Effluent Limitations.**

MFP's storm water sampling results provide conclusive evidence of MFP's failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

**1. Applicable Water Quality Standards.**

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Water Board's Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices ("BMPs") in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The California Toxics Rule ("CTR") is an applicable water quality standard under the Permit, violation of which is a violation of Permit conditions. *Cal. Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc.*, 124 F. Supp. 3d 1007, 1021 (E.D. Cal. 2015). CTR establishes numeric receiving water limits for toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes a numeric limit for Zinc of 0.12 mg/L (maximum concentration), which is one of the pollutants discharged by MFP. The *Water Quality Control Plan for the North Coast Region (Revised May 2011)* ("Basin Plan") also sets forth water quality standards and prohibitions applicable to MFP's storm water discharges. The Basin Plan identifies present and potential beneficial uses for the Russian River, which include municipal and domestic water supply, hydropower generation, agricultural supply, industrial service supply, navigation, wildlife habitat, warm freshwater habitat, cold freshwater habitat, warm and cold spawning, and contact and non-contact water recreation.

## 2. Applicable Effluent Limitations.

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable (“BAT”) for toxic and nonconventional pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA (“EPA benchmarks”) serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); Final Reissuance of NPDES Storm Water Multi-Sector General Permit for Industrial Activities, 65 Fed. Reg. 64746, 64766 (Oct. 30, 2000); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by MFP: Total Suspended Solids – 100 mg/L; Oil & Grease – 15.0 mg/L; Zinc<sup>2</sup> – 0.11 mg/L; and, Chemical Oxygen Demand – 120 mg/L.

## 3. MFP’s Storm Water Sample Results

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations and effluent limitations of the Permit:

### a. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
4/22/16	006	TSS	260	100
3/10/16	017	TSS	140	100
3/10/16	001	TSS	110	100
3/10/16	019	TSS	260	100
3/9/16	002	TSS	420	100
3/9/16	008	TSS	140	100
1/29/16	017	TSS	250	100
11/09/15	002	TSS	120	100
2/26/14	011	TSS	540	100

<sup>2</sup> The EPA benchmark for Zinc is hardness dependent. Data from the United States Geological Survey California Water Science Center indicates that the average hardness for the Russian River near the Facility is around 83 mg/L Calcium Carbonate. The EPA benchmark for Zinc in the Freshwater Hardness Range of 75 – 99.99 mg/L is 0.11 mg/L.

2/26/14	012	TSS	140	100
2/26/14	004	TSS	540	100
2/26/14	011	TSS	540	100
2/26/14	012	TSS	140	100
2/26/14	017	TSS	1000	100
1/29/14	002	TSS	3200	100
1/29/14	017	TSS	290	100
1/29/14	008	TSS	110	100
9/30/13	003	TSS	9800	100
4/4/13	002	TSS	950	100
4/4/13	003	TSS	740	100
3/6/13	002	TSS	810	100
3/6/13	003	TSS	420	100
2/19/13	002	TSS	780	100
2/19/13	003	TSS	900	100
2/19/13	008	TSS	220	100
1/29/13	002	TSS	3200	100
1/29/13	017	TSS	290	100
1/23/13	002	TSS	5000	100
1/23/13	003	TSS	3800	100
1/23/13	008	TSS	150	100
1/23/13	009	TSS	240	100
1/23/13	012	TSS	200	100
10/12/12	012	TSS	110	100

**b. Discharge of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
12/8/16	016	Zn	0.13	0.11	0.12
10/27/16	008	Zn	0.34	0.11	0.12
10/24/16	016 Kiln Pipe	Zn	0.17	0.11	0.12
3/10/16	021	Zn	0.13	0.11	0.12
3/10/16	019	Zn	0.34	0.11	0.12
3/10/16	21	Zn	0.13	0.11	0.12
3/9/16	008	Zn	0.36	0.11	0.12
3/9/16	016 Kiln Pipe	Zn	0.13	0.11	0.12
1/29/16	008	Zn	0.22	0.11	0.12
1/29/16	017	Zn	0.13	0.11	0.12
1/6/16	021	Zn	0.13	0.11	0.12
12/30/15	008	Zn	0.25	0.11	0.12
11/09/15	008	Zn	0.20	0.11	0.12
2/26/14	011	Zn	0.37	0.11	0.12

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2/26/14	012	Zn	0.70	0.11	0.12
2/26/14	Kiln Pipe	Zn	0.12	0.11	0.12
2/26/14	004	Zn	0.37	0.11	0.12
2/26/14	012	Zn	0.7	0.11	0.12
2/26/14	017	Zn	0.49	0.11	0.12
2/26/14	Kiln	Zn	0.12	0.11	0.12
1/29/14	002	Zn	0.67	0.11	0.12
1/29/14	017	Zn	0.24	0.11	0.12
1/29/14	008	Zn	0.45	0.11	0.12
1/29/14	012	Zn	0.47	0.11	0.12
1/29/14	Kiln	Zn	0.15	0.11	0.12
1/29/13	002	Zn	0.67	0.11	0.12
1/29/13	017	Zn	0.24	0.11	0.12
1/23/13	012	Zn	0.73	0.11	0.12
10/12/12	012	Zn	2.1	0.11	0.12

c. **Discharge of Storm Water Containing Chemical Oxygen Demand (COD) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
10/27/16	008	COD	140	120
10/24/16	018	COD	380	120
10/24/16	022	COD	130	120
10/24/16	015 Kiln Pipe	COD	160	120
10/14/16	016 Kiln Pipe	COD	180	120
10/14/16	015 Kiln Pond	COD	190	120
4/22/16	006	COD	300	120
4/22/16	022	COD	140	120
3/10/16	017	COD	320	120
3/10/16	015 Kiln Pond	COD	130	120
3/10/16	001	COD	400	120
3/10/16	018	COD	390	120
3/10/16	019	COD	450	120
3/9/16	002	COD	350	120
3/9/16	008	COD	220	120
1/29/16	008	COD	180	120
1/29/16	015 Kiln Pond	COD	210	120
1/29/16	017	COD	250	120
1/5/16	023	COD	250	120
11/09/15	002	COD	630	120
2/26/14	011	COD	340	120
2/26/14	012	COD	140	120
2/26/14	004	COD	340	120
2/26/14	011	COD	340	120



2/26/14	012	COD	140	120
2/26/14	017	COD	140	120
1/29/14	002	COD	800	120
1/29/14	017	COD	240	120
1/29/14	008	COD	230	120
1/29/14	012	COD	130	120
11/19/13	002	COD	540	120
11/19/13	008	COD	170	120
9/30/13	003	COD	6100	120
9/30/13	008	COD	160	120
6/25/13	003	COD	1800	120
4/4/13	002	COD	700	120
4/4/13	003	COD	610	120
4/4/13	008	COD	150	120
4/4/13	017	COD	140	120
3/6/13	002	COD	650	120
3/6/13	003	COD	360	120
3/6/13	007	COD	160	120
3/6/13	008	COD	180	120
3/6/13	017	COD	130	120
2/19/13	002	COD	560	120
2/19/13	003	COD	1100	120
2/19/13	007	COD	200	120
2/19/13	008	COD	150	120
2/19/13	017	COD	180	120
1/29/13	002	COD	800	120
1/29/13	017	COD	240	120
1/23/13	002	COD	2200	120
1/23/13	003	COD	3300	120
1/23/13	007	COD	240	120
1/23/13	012	COD	180	120
1/23/13	017	COD	180	120
11/19/13	002	COD	540	120
11/19/13	008	COD	170	120
10/12/12	012	COD	290	120

**d. Discharge of Storm Water Containing Oil & Grease (O&G) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/9/16	002	O&G	68	15.0

**e. Discharge of Storm Water with a pH Outside the Applicable EPA Benchmark Values**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
6/25/13	003	pH	5.5	6.0 - 9.0
2/19/13	007	pH	5.94	6.0 - 9.0
1/23/13	007	pH	4.04	6.0 - 9.0

**f. MFP's Sample Results Are Evidence of Violations of the General Permit**

MFP's sample results demonstrate violations of the Permit's discharge prohibitions, receiving water limitations and effluent limitations set forth above. CSPA is informed and believes that MFP has known that its storm water contains pollutants at levels exceeding General Permit standards since at least January 4, 2012.

CSPA alleges that such violations occur each time storm water discharges from the Facility. Attachment A hereto, sets forth the specific rain dates on which CSPA alleges that MFP has discharged storm water containing impermissible levels of Total Suspended Solids, Oil & Grease, pH, Zinc, and Chemical Oxygen Demand in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

**4. MFP Has Failed to Implement BAT and BCT**

Dischargers must implement BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. *See* 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2.

MFP has failed to implement the minimum BMPs required by the General Permit, including: good housekeeping requirements; preventive maintenance requirements; spill and leak prevention and response requirements; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. Permit, Section X.H.1(a-g). MFP has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day that MFP has failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act,

33 U.S.C. § 1311(a). MFP has been in violation of the BAT and BCT requirements at the Facility every day since at least January 4, 2012.

**5. MFP Has Failed to Implement an Adequate Monitoring Implementation Plan.**

The General Permit requires dischargers to implement a Monitoring Implementation Plan. 1997 General Permit Section B; 2015 General Permit, Section X.I. As part of their monitoring plan, dischargers must identify all storm water discharge locations. 1997 General Permit Section A.4.b; 2015 General Permit, Section X.I.2. Dischargers must then conduct monthly visual observations of each drainage area, as well as visual observations during discharge sampling events. 1997 General Permit Section B.4 and 8; 2015 General Permit, Section XI.A.1 and 2.

Dischargers must collect and analyze storm water samples from two (2) storm events within the first half of each reporting year (July 1 to December 31) and two (2) storm events during the second half of each reporting year (January 1 to June 3). 2015 General Permit, Section XI.B. Section XI.B requires dischargers to sample and analyze during the wet season for basic parameters such as pH, total suspended solids (“TSS”) and oil and grease (“O&G”), certain industry-specific parameters set forth in Table 2 of the General Permit, and other pollutants likely to be in the storm water discharged from the facility based on the pollutant source assessment. 2015 General Permit, Section XI.B.6. Dischargers must submit all sampling and analytical results via SMARTS within thirty (30) days of obtaining all results for each sampling event. 2015 General Permit Section XI.B.11. MFP has failed to develop and implement an adequate Monitoring Implementation Plan. These failures include: failing to analyze samples for all required pollutants (including but not limited to arsenic and copper as required for facilities under SIC Code 2491), failing to sample from all discharge locations and failing to collect samples from the required number of qualifying storm events.

Each day that MFP has failed to develop and implement an adequate Monitoring Implementation Plan is a separate and distinct violation of the Act and Permit. MFP has been in violation of the Monitoring Implementation Plan requirements every day since at least January 4, 2012.

**6. MFP Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the

Regional Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

CSPA's investigation indicates that MFP has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. MFP has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations. Each day MFP failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. MFP has been in violation of these requirements at the Facility every day since at least January 4, 2012.

#### **7. MFP Has Failed to Complete Required Exceedance Response Actions.**

The General Permit requires dischargers to compare the results of their sampling, analysis, and reporting to the two types of Numeric Action Level ("NAL") values in Table 2 to determine whether either type of NAL has been exceed for each applicable parameter. 2015 General Permit, Section XII.A. A discharger's baseline status for any given parameter shall change to Level 1 status if sampling results indicate an NAL exceedance for that same parameter. 2015 General Permit, Section XII.C.

By October 1 following the commencement of Level 1 status for any parameter with sampling results indicating an NAL exceedance, the discharger shall complete an evaluation, with the assistance of a Qualified Industrial Storm water Practitioner ("QISP"), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s) and identify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances. 2015 General Permit, Section XII.C.1.

Based on the above evaluation, the discharger shall, no later than January 1 following the commencement of Level 1 status, revise the SWPPP as necessary and implement any additional BMPs identified in the evaluation, certify and submit via SMARTS a Level 1 ERA Report prepared by a QISP that includes a summary of the level 1 ERA Evaluation and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL, and certify and submit via SMARTS the QISP's identification number, name, and contact information. 2015 General Permit, Section XII.C.2.

CSPA's investigation indicates that MFP commenced Level 1 status for TSS and COD on July 1, 2016. MFP has failed to complete an adequate evaluation as required by Section XII.C.1 of the 2015 General Permit by October 1, 2016. The evaluation fails to identify "the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances" and to comply with the requirements of the 2015 General Permit. 2015 General Permit, Section XII.C.1.



MFP has also failed to submit to SMARTS a Level 1 ERA Report that complies with the requirements of Section XII.C.2 of the 2015 General Permit. The Level 1 ERA Report dated December 30, 2016 and uploaded to SMARTS by MFP fails to include an adequate “summary of the Level 1 ERA Evaluation” required in subsection XII.C.1 of the 2015 General Permit. Specifically, the report summarizes what documents and data were reviewed for the evaluation, but provides no meaningful evaluation of what BMPs need improvement and how they could be improved. Although the report describes the Facility’s drainage areas at some length, the entire discussion lacks “a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL.”

Each day MFP failed to properly complete the evaluation is a violation of the 2015 General Permit. MFP has been in violation of this requirement every day since October 2, 2016. In addition, each day MFP failed to complete the Level 1 ERA Report is a violation of the General Permit. MFP has been in violation of this requirement every day since January 2, 2016.

### **III. Persons Responsible for the Violations.**

CSPA puts MFP on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts MFP on formal notice that it intends to include those persons in this action.

### **IV. Name and Address of Noticing Parties.**

The name, address and telephone number of each of the noticing parties is as follows:

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3536 Rainer Avenue  
Stockton, CA 95204  
(209) 464-5067

### **V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard  
William N. Carlon  
Law Offices Of Andrew L. Packard  
245 Kentucky Street, Suite B3  
Petaluma, CA 94952  
(707) 763-7227  
Andrew@PackardLawOffices.com

Reed W. Super  
Super Law Group, LLC  
180 Maiden Lane, Suite 603  
New York, NY 10038  
(212) 242-2273  
reed@superlawgroup.com

**VI. Conclusion**

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against MFP and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



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Andrew L. Packard  
Law Offices of Andrew L. Packard  
Counsel for California Sportfishing Protection Alliance

**SERVICE LIST**

**VIA CERTIFIED MAIL**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Jared Blumenfield, Regional Administrator  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Hon. Loretta Lynch  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Matthias St. John, Executive Officer  
North Coast Regional Water Quality Control Board  
5550 Skylane Boulevard Suite A  
Santa Rosa, CA 95403

**ATTACHMENT A**  
**Notice of Intent to File Suit, MFP**  
**Significant Rain Events,\* January 4, 2012– January 4, 2017**

January 19, 2012	November 1, 2012	June 25, 2013	September 27, 2014
January 20, 2012	November 8, 2012	June 26, 2013	October 15, 2014
January 21, 2012	November 9, 2012	September 21, 2013	October 20, 2014
January 22, 2012	November 17, 2012	September 30, 2013	October 21, 2014
January 23, 2012	November 18, 2012	November 19, 2013	October 24, 2014
January 26, 2012	November 20, 2012	November 20, 2013	October 25, 2014
February 1, 2012	November 21, 2012	November 21, 2013	October 26, 2014
February 7, 2012	November 28, 2012	December 7, 2013	October 31, 2014
February 8, 2012	November 29, 2012	January 12, 2014	November 1, 2014
February 13, 2012	November 30, 2012	January 29, 2014	November 13, 2014
February 29, 2012	December 1, 2012	January 30, 2014	November 14, 2014
March 1, 2012	December 2, 2012	February 2, 2014	November 20, 2014
March 11, 2012	December 3, 2012	February 3, 2014	November 21, 2014
March 12, 2012	December 4, 2012	February 6, 2014	November 22, 2014
March 13, 2012	December 5, 2012	February 7, 2014	November 28, 2014
March 14, 2012	December 12, 2012	February 8, 2014	November 29, 2014
March 15, 2012	December 16, 2012	February 9, 2014	November 30, 2014
March 16, 2012	December 17, 2012	February 10, 2014	December 1, 2014
March 17, 2012	December 21, 2012	February 13, 2014	December 2, 2014
March 18, 2012	December 22, 2012	February 16, 2014	December 3, 2014
March 21, 2012	December 23, 2012	February 19, 2014	December 4, 2014
March 22, 2012	December 24, 2012	February 27, 2014	December 6, 2014
March 24, 2012	December 26, 2012	February 28, 2014	December 8, 2014
March 25, 2012	December 27, 2012	March 1, 2014	December 9, 2014
March 26, 2012	December 29, 2012	March 3, 2014	December 11, 2014
March 27, 2012	January 6, 2013	March 4, 2014	December 12, 2014
March 28, 2012	January 24, 2013	March 6, 2014	December 15, 2014
March 29, 2012	February 7, 2013	March 10, 2014	December 16, 2014
March 30, 2012	February 8, 2013	March 25, 2014	December 17, 2014
March 31, 2012	February 19, 2013	March 26, 2014	December 18, 2014
April 1, 2012	February 20, 2013	March 27, 2014	December 19, 2014
April 4, 2012	March 6, 2013	March 29, 2014	December 20, 2014
April 12, 2012	March 7, 2013	March 30, 2014	December 21, 2014
April 13, 2012	March 20, 2013	April 1, 2014	December 25, 2014
April 26, 2012	March 21, 2013	April 2, 2014	January 16, 2015
April 27, 2012	March 31, 2013	April 4, 2014	January 17, 2015
May 4, 2012	April 1, 2013	April 5, 2014	January 19, 2015
October 22, 2012	April 4, 2013	April 27, 2014	February 6, 2015
October 23, 2012	April 6, 2013	September 18, 2014	February 7, 2015
October 24, 2012	April 8, 2013	September 25, 2014	February 9, 2015
October 25, 2012	May 28, 2013	September 26, 2014	March 23, 2015

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.



**ATTACHMENT A**  
**Notice of Intent to File Suit, MFP**  
**Significant Rain Events,\* January 4, 2012– January 4, 2017**

March 24, 2015	January 17, 2016	October 27, 2016
April 6, 2015	January 18, 2016	October 28, 2016
April 7, 2015	January 19, 2016	October 29, 2016
April 8, 2015	January 22, 2016	October 30, 2016
April 25, 2015	January 23, 2016	October 31, 2016
May 15, 2015	January 25, 2016	November 1, 2016
July 10, 2015	January 29, 2016	November 12, 2016
September 17, 2015	January 30, 2016	November 16, 2016
October 28, 2015	February 4, 2016	November 19, 2016
November 2, 2015	February 18, 2016	November 20, 2016
November 8, 2015	February 19, 2016	November 23, 2016
November 9, 2015	February 20, 2016	November 26, 2016
November 10, 2015	March 3, 2016	November 27, 2016
November 15, 2015	March 5, 2016	November 28, 2016
November 25, 2015	March 6, 2016	December 8, 2016
December 4, 2015	March 7, 2016	December 9, 2016
December 6, 2015	March 9, 2016	December 10, 2016
December 7, 2015	March 10, 2016	December 11, 2016
December 10, 2015	March 11, 2016	December 14, 2016
December 11, 2015	March 12, 2016	December 15, 2016
December 13, 2015	March 13, 2016	December 16, 2016
December 14, 2015	March 14, 2016	December 23, 2016
December 18, 2015	March 21, 2016	December 24, 2016
December 19, 2015	March 22, 2016	January 3, 2017
December 20, 2015	April 10, 2016	January 4, 2017
December 21, 2015	April 14, 2016	
December 22, 2015	April 22, 2016	
December 23, 2015	April 23, 2016	
December 24, 2015	April 27, 2016	
December 25, 2015	April 28, 2016	
December 28, 2015	May 22, 2016	
December 30, 2015	June 18, 2016	
January 4, 2016	October 3, 2016	
January 5, 2016	October 4, 2016	
January 6, 2016	October 14, 2016	
January 7, 2016	October 15, 2016	
January 9, 2016	October 16, 2016	
January 13, 2016	October 17, 2016	
January 14, 2016	October 18, 2016	
January 15, 2016	October 25, 2016	
January 16, 2016	October 26, 2016	

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**EXHIBIT C – Infiltration BMPs Dimensions Table**

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[PROPOSED ] CONSENT AGREEMENT

**Exhibit C - Infiltration BMPs Dimensions Table**  
Mendocino Forest Products - Ukiah Sawmill, Ukiah, California

Drainage Area Name	Total Area Acres	Impervious Area		Pervious Area		Pervious Area Predominant Soil Types (1)					New/Expanded Infiltration BMP		
		Percent	Acres	Percent	Acres	Urban Land (2)	Cole Loam	Russian Loam	Xerofluvents	Xerofluvents-River Wash Complex	Dimensions		Percolation Rate (minutes/inch)
											Area	Depth (Feet)	
008	7.5	52%	3.9	48%	3.6	74%	4%	8%	--	15%	2,800 sq ft Additional Infiltration Trench: Approximately 4 feet x 250 feet x 6 feet	6	25.1
011	7.5	55%	4.1	45%	3.4	98%	--	--	--	2%	3,300 sq ft	6	20.9
015	7.4	89%	6.6	11%	0.8	--	40%	60%	--	--	7,800 sq ft	4	125.4
018E	1.6	83%	1.3	17%	0.3	100%	--	--	--	--	1,400 sq ft	3	27.8
018W	2.4	38%	0.9	62%	1.5	100%	--	--	--	--	1,700 sq ft	3	20.9
019	1.0	79%	0.8	21%	0.2	3%	97%	--	--	--	800 sq ft	4	41.8
023	former 001 (3)	1.5	74%	1.1	26%	0.4	30%	70%	--	--	4,200 sq ft	2	35.5
	former 017 (3)	1.4	96%	1.3	4%	0.0	100%	--	--	--	--	--	--
	West Field (eastern portion) Infiltration BMP (3)(4)	1.3	0%	0.0	100%	1.3	29%	71%	--	--	1.3 acres	3	41.8
	Combined former 001, former 017, and West Field (eastern portion) Infiltration BMP Drainage Areas (4)	4.2	58%	2.4	42%	1.8	32%	68%	--	--	--	--	--
024	former 002 (3)	5.4	47%	2.6	53%	2.9	100%	--	--	--	--	--	--
	Log Yard (3)	22.5	9%	1.9	91%	20.6	100%	--	--	--	--	--	--
	East Field Infiltration BMP (3)	19.2	0%	0.0	100%	19.2	0%	100%	--	--	19.2 acres	3	25.1
													31.4
	Combined former 002, Log Yard, and East Field Infiltration BMP Drainage Areas	47.1	10%	4.5	90%	42.6	55%	45%	--	--	--	--	--
025	025 (includes former 004) (3)	16.4	40%	6.6	60%	9.8	85%	--	13%	2%	11,250 sq ft	6	41.8
	former 012 (3)	4.2	96%	4.1	4%	0.2	89%	--	--	11%	--	--	--
	Combined 025 (includes former 004) and former 012 Drainage Areas	20.7	52%	10.7	48%	10.0	85%	--	13%	2%	--	--	--

**Abbreviations:**

-- = not applicable

BMP = best management practice

sq ft = square feet

**Notes:**

1. Soil types for pervious areas were determined based on the USDA's Web Soil Survey website (<https://websoilsurvey.sc.egov.usda.gov/>) for Mendocino County, Eastern Part and Southwestern Part of Trinity County, California.
2. Urban land does not have a predominant soil type provided in the USDA's Web Soil Survey data. The predominant non-urban soil type in the vicinity is Russian Loam (or Cole Loam, if the East Field Infiltration BMP is excluded).
3. Shaded drainage areas are incorporated into the combined area shown below the shading.
4. In calculating these areas we have assumed that water from the western portion of the West Field infiltrates on the west side of the existing berm and does not contribute to the West Field (eastern portion) Infiltration BMP.

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**EXHIBIT D – DA 025, Engineered Drawing of Infiltration BMP**

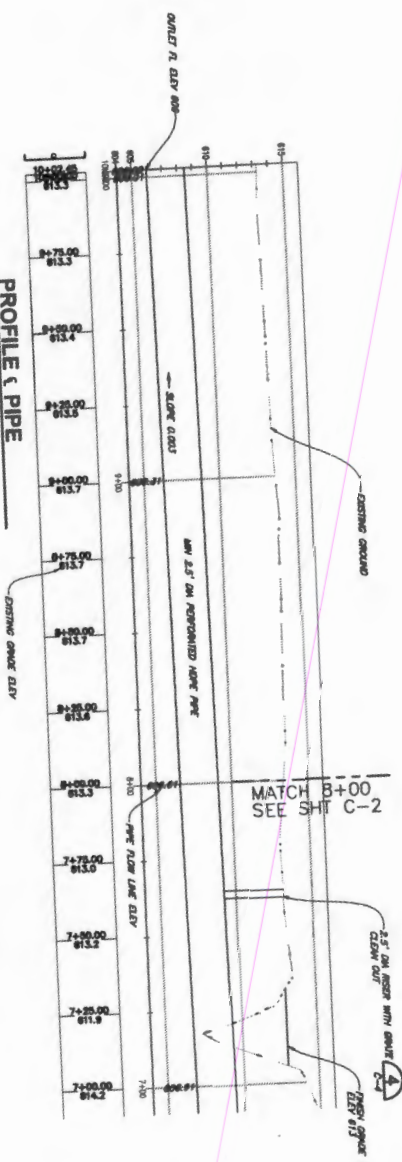
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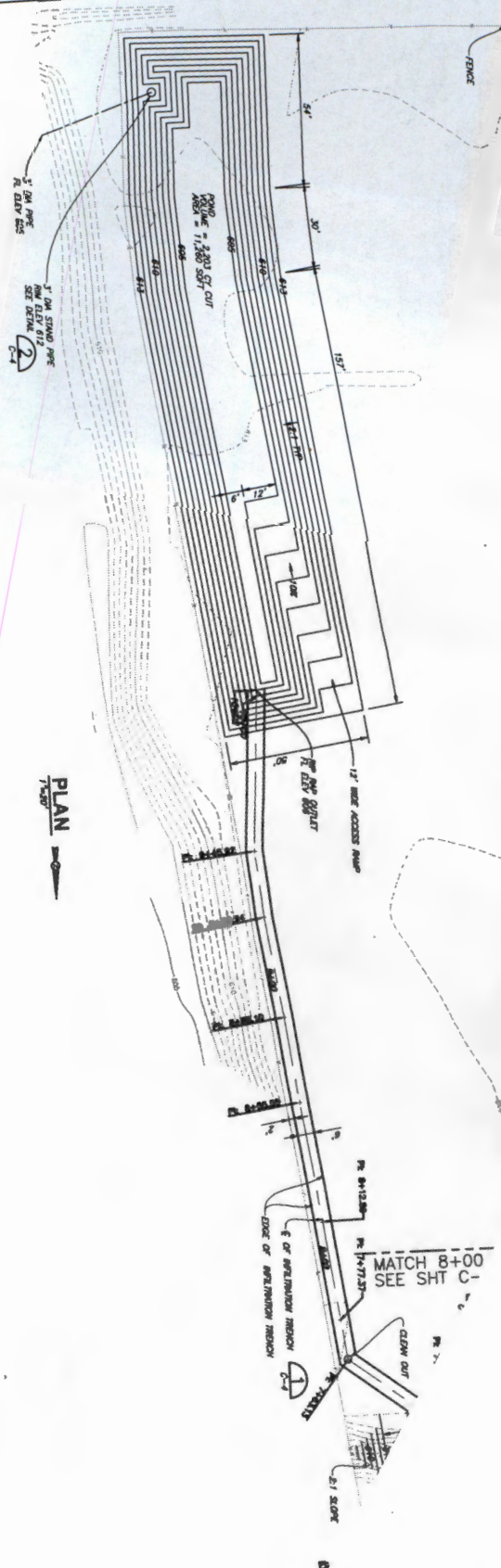


SAVED: 10/31/2017 9:13 AM ESCHMEIDER, PLOTTED: 10/31/2017 1:34 PM ERIC SCHMEIDER  
| WILLITS PROJECTS | 2016 | 416005 - KANSAS P&TQC | 200 - MICROCYCLEPND | DWG5 | 416005 - COVER.DWG

**PROFILE & PIPE**  
 SCALE 1" = 4' V  
 1" = 40' H



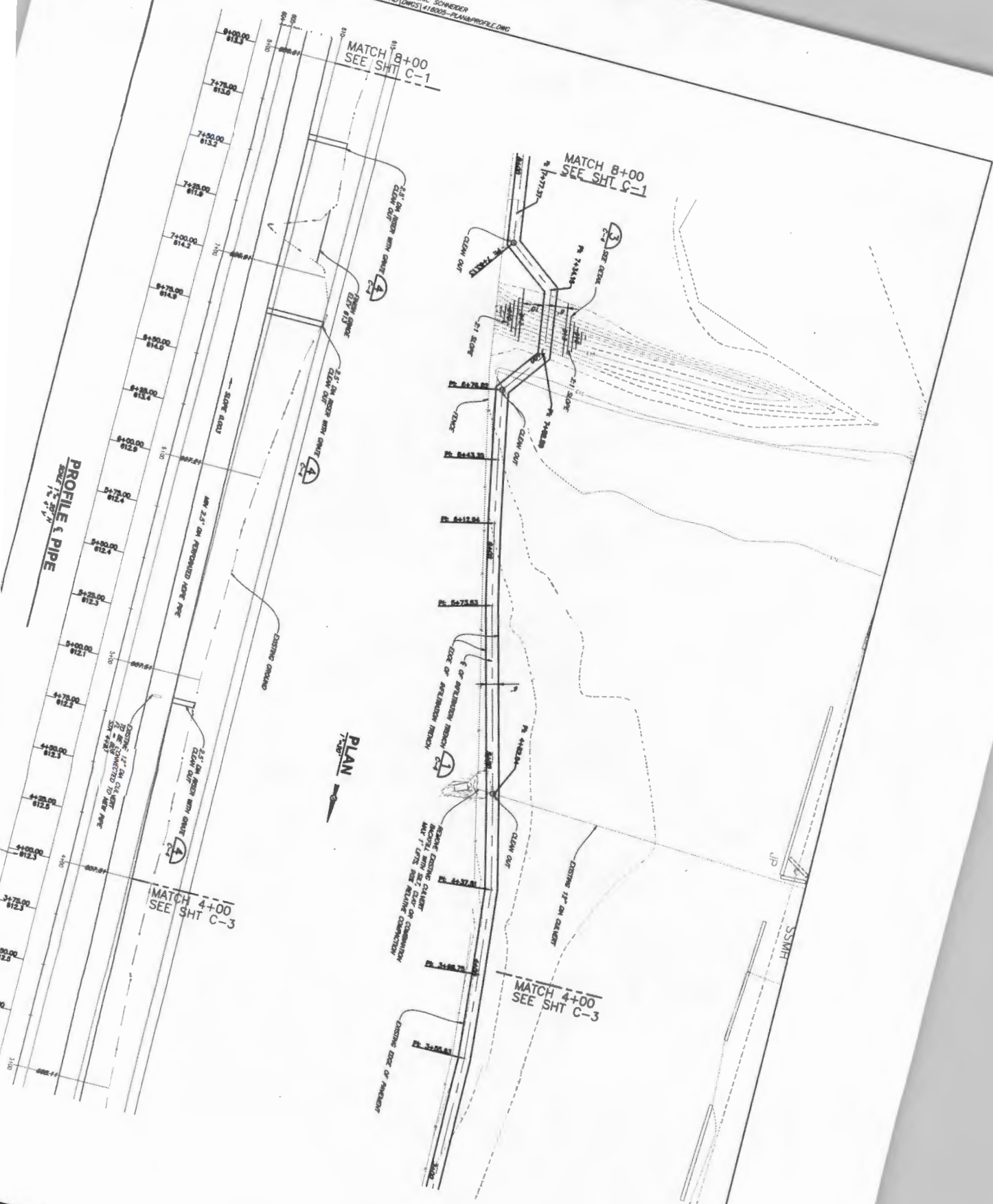
**PLAN**  
 SCALE 1" = 40' H



DRAWING <b>C-1</b> DATE 10/20/2017 PROJ NO 418005.200	Kansas Asphalt Inc. Utah Merrill Drainage Improvements Utah, Mercedino County, California	DESG DR AMC CHK MTH APVD	NO. DATE REVISION BY
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DRAWING <b>C-2</b> DATE 10/20/2017 PROJ NO 418005.200
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*ESN*



Donas Asphalt Inc.  
 Hill Drainage Improvements  
 Occo County, California

& PROFILE

DISN					
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CHK	MTN				
APVD					
NO.	DATE	REVISION	BY		

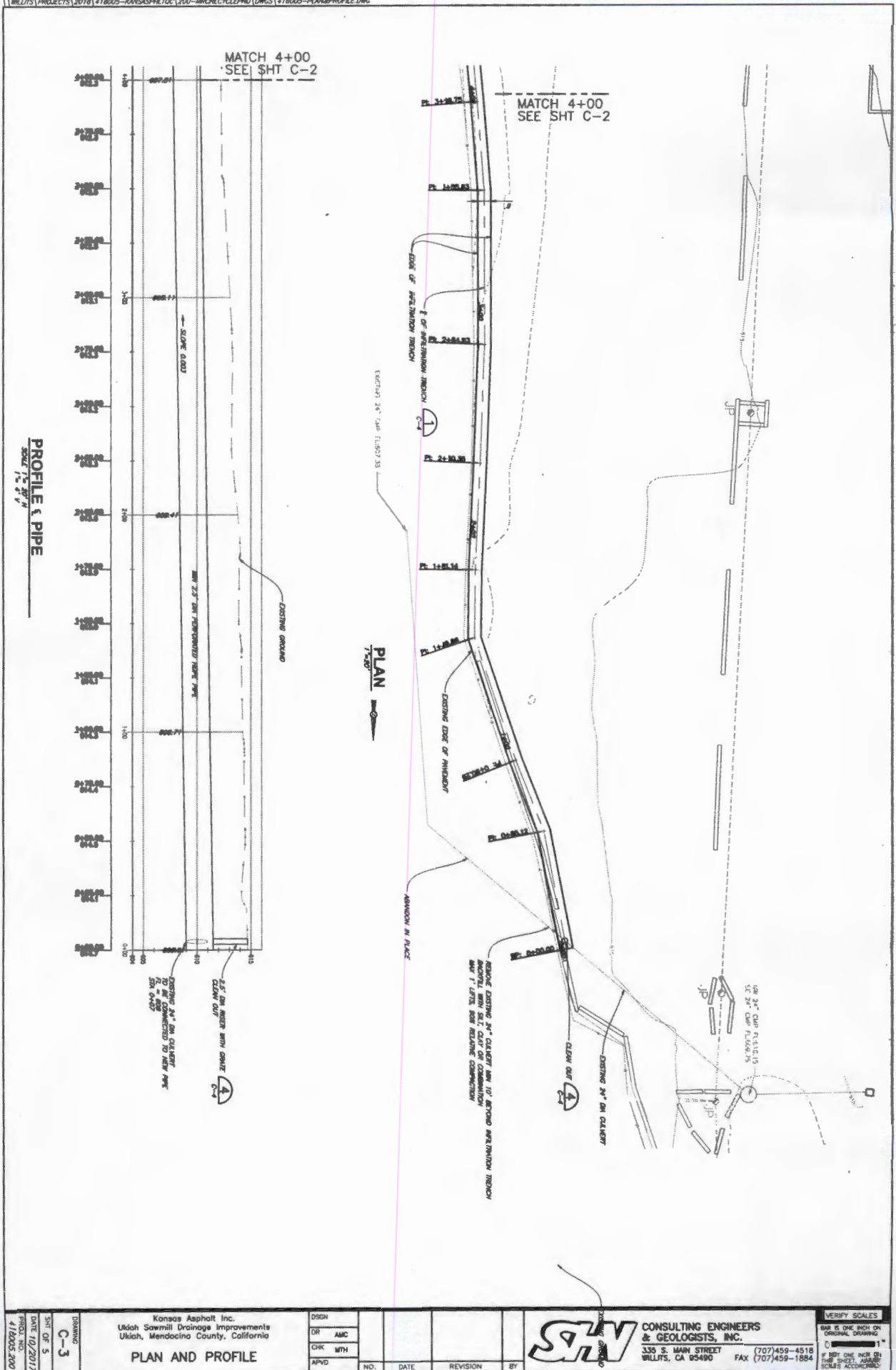


CONSULTING ENGINEERS  
 & GEOLOGISTS, INC.  
 335 S. MAIN STREET  
 WILLITS, CA 95480

(707)458-4518  
 FAX (707)458-1884

VERIFY SCALES  
 NOT TO SCALE  
 1" = 10' HORIZONTAL  
 1" = 10' VERTICAL









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**EXHIBIT E – Design drawings for the storm water conveyance system routing all flows from DAs 004, 012 and 025 to the new infiltration BMP in DA 025**

*Note: This exhibit has been left blank because the conveyance system is depicted on Sheets C-1 through C-4 of Exhibit D, above.*

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**EXHIBIT F – As-Built Drawings of DP 011**

*Note: This exhibit has been left blank and is expected to be completed on or before December 10, 2017, when it will be added to the final agreement filed with the Court.*

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**EXHIBIT G – As-Built Drawings of DP 015**

**Note: This exhibit has been left blank and is expected to be  
completed on or before December 10, 2017, when it will be added to  
the final agreement filed with the Court.**

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[PROPOSED ] CONSENT AGREEMENT



**EXHIBIT H – Sampling Parameters**

Parameter	NAL Value
pH (Field test)	6.0-9.0 s.u.
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Zinc	0.26 mg/L
Copper (DA 006 only)	0.0332 mg/L
Propiconazole* (at DP 006, 008, 004, 011, 012 and 025 only)	N/A
Chemical Oxygen Demand	120 mg/L
Dioxin** (at DP 008 and DP 023 only)	N/A

\*This parameter may be eliminated from the sampling required under this Agreement as follows. In the event that four consecutive samples at a given discharge point are “non-detects” for the parameter at issue, sampling for that parameter at that Discharge Point may be discontinued.

\*\* The term ‘dioxins’ as used in this Agreement refers to the total toxic equivalency (TEQ), calculated using the 2005 World Health Organization toxic equivalency factors (TEFs), adopted by the California Office of Environmental Health Hazard Assessment in 2011, of 17 specific chlorinated dibenzodioxins and chlorinated dibenzofurans analyzed using US EPA Method 1613. This parameter may be eliminated from the sampling required under this Agreement in the event that two consecutive samples at the specified discharge point(s) have values less than or equal to samples taken concurrently from the Russian River upstream of the discharge and within 200 yards of the Facility.

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**EXHIBIT I – Site Access Agreement**

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[PROPOSED] CONSENT AGREEMENT

## SITE ACCESS AGREEMENT

MENDOCINO FOREST PRODUCTS COMPANY, LLC (“MFP”) and CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”) (each individually a “Party” and collectively referred to herein as the “Parties”), hereby agree and stipulate as follows:

WHEREAS, CSPA sent a letter to MFP dated January 4, 2017 (the “Notice Letter”) pursuant to 33 U.S.C. § 1365(a) concerning certain alleged violations of the Clean Water Act and California’s Industrial Storm Water Permit at MFP’s Ukiah, California facility (the “Facility”);

WHEREAS, CSPA filed a civil complaint in the United States District Court for the Northern District of California on or about March 8, 2017 (hereinafter, the “Complaint”) asserting certain claims for declaratory and injunctive relief and civil penalties against CSPA regarding the Facility, thereby commencing the lawsuit designated as Case No. 3:17-cv-01223 (the “Lawsuit”);

WHEREAS, the Parties undertook settlement negotiations and reached an agreement regarding settlement of the Lawsuit on or about November 1, 2017 (the “Settlement Discussions”);

WHEREAS, the terms of the settlement are incorporated into a Consent Agreement and shall be attached to a stipulated dismissal order of the United States District Court for the Northern District of California (the “Consent Agreement”) and shall remain in force and effect for the duration provided therein;

WHEREAS, the Consent Agreement provides CSPA and its representatives the right to undertake inspections, and furthermore collect and analyze storm water samples at identified discharge locations (a “Site Inspection”, or collectively referred to herein as “Site Inspections”), during the term of the Consent Agreement; and

WHEREAS, the Consent Agreement provides that said Site Inspections shall be provided for pursuant to the terms and conditions of this Site Access Agreement (this “Agreement”).

NOW, THEREFORE, the Parties and each person who signs below covenant and agree as follows:

1. The Site Inspection shall be conducted pursuant to the terms and conditions of this Agreement and the Consent Agreement.
2. Except as provided for immediately hereafter, any and all information or data collected, or observations made, during the Site Inspections and any analysis, or notes will remain confidential for the Term of the Consent Agreement and during that time will be used only for purposes of compliance with the Consent Agreement and will not be publicly disclosed for any reason. In the case of storm water samples collected by CSPA pursuant to the Consent Agreement and this Agreement, the analytical results of such sampling shall similarly remain confidential for the Term of the Consent Agreement, except that they may be entered as exhibits

before the United States District Court for the sole purpose of a motion for enforcement of the Consent Agreement.

3. The Site Inspection will last no more than six hours, exclusive of any breaks taken.

4. CSPA will be represented by no more than three (3) attendees at the Site Inspection. Any and all agents or other third parties participating in the Site Inspection on behalf of CSPA, including but not limited to, experts, consultants, attorneys, or other independent contractors, must first sign the Agreement to be Bound attached hereto as **Exhibit A**, prior to participating in the Site Inspection.

5. No later than five (5) business days before the Site Inspection, CSPA will provide MFP and MFP's Counsel with a list of its representatives who will attend the Site Inspection. No later than seven (7) days before the Site Inspection or upon execution of this Agreement, MFP will provide CSPA with a copy of the proposed tour route.

6. During the Site Inspection, CSPA shall be permitted access to all areas of the Facility relating to storm water management. However, CSPA's representatives must remain in the company of MFP personnel at all times and must not deviate from the designated tour route, unless permitted to do so in advance by MFP.

7. During the Site Inspection, CSPA will follow the directions of the MFP tour guide and security escort.

8. During the Site Inspection, CSPA will comply with all safety precautions instituted by MFP to ensure that no safety hazards result from the Site Inspection. MFP shall provide CSPA with appropriate safety instructions, personal protective equipment and/or a safety orientation prior to the Site Inspection.

9. The Facility is an operating industrial facility. To avoid interfering with Facility operations, CSPA will avoid communicating with Site workers or any other personnel on the Site other than MFP's designated representatives and Counsel escorting CSPA's representatives on the Site Inspection, and will strictly comply with any safety instructions given during the Site Inspection.

10. Except as provided below, during the Site Inspection, CSPA's representatives, including its consultants or attorneys, attending the Site Inspection will be permitted to take written notes to record their observations of the Facility, subject to the restrictions contained in this Agreement. CSPA's representatives will be permitted to take photographs, videos or other electronic recordings (excluding audio) of the Facility during the Site Inspection relating to storm water management; all such recorded data shall be stamped confidential and copied to MFP within seven (7) days after the Site Inspection is completed. No photographs, videos, or other electronic recordings, are permitted of Site workers, personnel or employees, or participants in the Facility inspection that is the subject of this Agreement. All such recorded data is subject to Paragraph 2 herein and the Agreement to be Bound attached hereto as **Exhibit A**.



11. CSPA will not conduct any sampling, tests or experiments or cause any physical disturbance on the Site without MFP's prior written authorization except as otherwise provided for in the Consent Agreement and this Agreement.

12. CSPA, for itself, its successors and assigns, agrees to be responsible for and assumes all risks of and liability for and to indemnify, protect and hold harmless MFP and hereby releases MFP, its heirs, successors and assigns and each of its officers, agents, servants, employees, and contractors from and against any and all liability, losses, injuries, deaths, claims, demands, actions, suits, judgments, damages (including consequential damages), costs, expenses (including reasonable attorneys' fees), civil penalties, and fines which may result in any manner from the Site Inspection and/or the entry onto the Site by CSPA, with the exception of any claims arising out of negligence, whether active or passive, or any acts or omissions of MFP or by MFP's invitees or permittees also on the site or any other third party not under MFP's control to the extent permitted by California law.

13. By conducting the Site Inspections as described herein, CSPA has not waived its rights to seek discovery pursuant to Federal Rules of Civil Procedure 26 and/or 34, including entry onto the Facility for discovery purposes in any action other than the action initiated by the Complaint. Conversely, by permitting the Site Inspection, MFP has not waived its right to object to such discovery by CSPA.

14. Since the parties are disclosing sensitive information, including confidential proprietary information and trade secrets, in reliance upon this Agreement, any breach of this Agreement would cause irreparable injury for which monetary damages would be inadequate. Consequently, any party to this Agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this Agreement.

15. Any party breaching this Agreement shall be liable for and shall indemnify the non-breaching parties for all costs, expenses, liabilities, and fees incurred as a result of such breach.

16. Notices to the Parties and the Parties' counsel shall be provided as set forth in the Consent Agreement.

17. This Agreement shall be governed by the laws of the State of California.

The signatories to this Agreement warrant that they have the authority to execute it and to bind themselves and the parties they represent to its terms. By providing the below signatures,

the Parties agree to be bound by the above terms. This Agreement is effective upon full execution.

Dated: November 13 2017

MENDOCINO FOREST PRODUCTS  
COMPANY, LLC.

By: J. Pelkey

Name: Tim Pelkey

Title: Chief Financial Officer

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_


By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: November 13, 2017

CALIFORNIA SPORTSFISHING  
PROTECTION ALLIANCE

By: 

Name: Bill Jennings

Title: Executive Director

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**  
**AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, declare:

1. I have read, and am fully familiar with, the Site Access Agreement dated November \_\_, 2017 (the "Site Access Agreement").

2. I agree to be bound by, and to comply fully with, the terms of the Site Access Agreement.

3. I hereby consent to the jurisdiction of the United States District Court, Northern District of California, for the purpose of enforcing this Agreement to be Bound, even if such enforcement proceedings occur after termination of this Action.

Dated: \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_

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Dated: \_\_\_\_\_, 201\_\_

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